

In the Supreme Court of the United States.

OCTOBER TERM, 1920.

THE UNITED STATES OF AMERICA, <i>Plaintiff</i>	} No. 692.
<i>in error,</i>	
<i>v.</i>	
A. Z. HUTTO.	

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF OKLAHOMA.

BRIEF FOR THE UNITED STATES.

STATEMENT.

The writ of error in this case (R. 9) is under the Criminal Appeals Act of March 2, 1907, c. 2564, 34 Stat. 1246, and brings up for review a judgment (R. 6) of the District Court for the western district of Oklahoma sustaining a demurrer (R. 5) to an indictment (R. 2-5) under § 37 of the Penal Code for conspiracy to violate § 2078 of the Revised Statutes.

The indictment charges that Hutto was a duly appointed and qualified Indian farmer for the Tonkawa tribe of Indians on the Ponca Reservation in Oklahoma, charged with the duty of superintending and directing farming among the Indians, to supervise the leasing of their lands and to appraise

their value for sale; that the defendant Hutto and one D. E. Ryan feloniously conspired and agreed with each other that the said Hutto while so employed in Indian affairs should have an interest and concern in certain trades with the Indians, not for and on account of the United States, in violation of § 2078, R. S., to-wit, in certain sales and purchasing of automobiles and other commodities by the Indians; that in pursuance of this unlawful conspiracy Hutto and Ryan induced the Indians Railroad Cisco and Robert Tah to purchase automobiles from the said Ryan for excessive and unreasonable prices, and for the services of said Hutto in inducing each of the Indians to purchase said automobiles said Hutto was paid \$100 by said Ryan in each case.

The court in the order sustaining the demurrer (R. 6) based its decision on the ground that § 2078 of the Revised Statutes was inapplicable to transactions involving property with respect to which the government had no interest or control, and no such interest or control was alleged in the indictment.

This case is in all essential respects like that of *United States v. A. Z. Hutto, J. R. White, Ray See and J. R. Ricks*, No. 691, this term. The same questions are presented for determination, the only difference being that in No. 691 the offenses charged involved transactions in lands, while in No. 692 the transactions involved are the sales to Indians of automobiles.

CONCLUSION.

For the reasons set forth in our brief in No. 691, we respectfully submit that the judgment of the District Court should be reversed and the case remanded for further proceedings.

LESLIE C. GARNETT,

Special Assistant to the Attorney General.

MARCH, 1921.



U.S. Supreme Court
FILED
APR 5 1921
JAMES O. MAHONEY
CLERK

No. 985

In the Supreme Court of the United States

OCTOBER TERM, 1920

**THE UNITED STATES OF AMERICA, Plaintiff in
Error**

A. Z. HUTTO, Defendant in Error

**IN ERROR TO THE DISTRICT COURT OF THE
UNITED STATES FOR THE WESTERN DIS-
TRICT OF OKLAHOMA**

BRIEF FOR THE DEFENDANT IN ERROR

In the Supreme Court of the United States

OCTOBER TERM, 1920

THE UNITED STATES OF AMERICA

Plaintiff in Error,

v.

A. Z. HUTTO, Dedendant in Error

No. 692

**IN ERROR TO THE DISTRICT COURT OF THE
UNITED STATES FOR THE WESTERN DIS-
TRICT OF OKLAHOMA**

BRIEF FOR THE DEFENDANT IN ERROR

STATEMENT

The matters set out in statement by the United States are correct, and this case is in all essential respects like that of The United States of America vs. A. Z. Hutto, J. R. White, Ray See and J. R. Ricks, No. 691, this term. The same facts and the same law apply.

CONCLUSION

In view of the fact that the United States has asked that the reasons set forth in their brief in No. 691 should be applied in the case at bar, No. 692, we join with the United States in said request and ask that the argument and brief of the appellees in case No. 691 be applied and that this case be affirmed.

HENRY S. JOHNSTON,
Of Perry, Okla.

Attorney for Defendant in Error.